

## **SECTION 11**

### **CONTRACTING FOR FOOD SERVICES**

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## SALE OF COMMERCIALLY PREPARED FOOD ITEMS

### Legal Arrangements

Sponsors may purchase items prepared off-site by commercial firms and include them in their meal service operation. Items may be incorporated into reimbursable meals or sold as a la carte items. A firm, which has a commercial catering license, such as fast food franchise, restaurant or bakery, may sell to a sponsor as a supplier or vendor. It is also permissible for a sponsor to enter into a franchise agreement with a commercial firm. The sponsor continues to operate the food service as a franchise, pays the firm for training, recipes, and the use of the company logo, but the food is prepared by the sponsor at the sponsor's site.

Proper procurement practices must be used prior to purchasing commercial food items for resale to students. A franchise agreement and the purchase of food products for use under a franchise agreement are also subject to competitive bidding requirements of the National School Lunch Program.

Under the National School Lunch Program, sponsors may not, under any conditions, have a commercial company come into a school and sell product directly to students.

### Meat and Poultry Inspection Requirement

USDA, Food Safety and Inspection Service (FSIS) is required by law to inspect commercially prepared meat items when they leave the commercial firm for resale through a school or other entity. Currently, **two items are exempt** from federal meat and poultry inspection prior to resale. The items are meat pizzas and hot and cold sandwiches. These are the only two meat and poultry items, which schools may purchase from a commercial firm. FSIS does not consider tacos as a sandwich therefore, they are not an exempt item. All other meat and poultry items must be inspected prior to resale. Questions related to meat and poultry inspection may be directed to the Arizona Department of Agriculture, (602) 542-4971.

## CATERING CONTRACTS

The Standard Agreement to Provide Food Service is available at: [www.ade.az.gov/health-safety/cnp/nslp/Operating/ContractingforMealService.asp](http://www.ade.az.gov/health-safety/cnp/nslp/Operating/ContractingforMealService.asp) and may be used when the National School Lunch Program (NSLP), School Breakfast Program (SBP) and Summer Food Service Program (SFSP) sponsoring agency (sponsor) enters into an agreement with a food service vendor for the preparation, delivery and/or pick up of unitized meals with or without milk or juice which will be claimed for reimbursement under the NSLP/SBP/SFSP. For this purpose, a "vendor" is defined as a commercial food service vendor.

If the vending agreement is between two public agencies (i.e. a charter school and a public school district), you are allowed to use any customary form of contract or agreement used by the school district, if that form incorporates all the provisions set forth in 7 CFR 210, 215, 220, 225 and 250 of the federal regulations, if applicable.

The contract **must** be signed by both the sponsor and the vendor, and contain the requirements outlined in the federal regulations. No deletions of clauses or items will be allowed without the

approval of the ADE/Health and Nutrition Services office. Additional clauses may be added to bring the contract into conformance with applicable State and/or local laws governing your agency. Either the sponsor or the vendor may add additional clauses. If an alternative format is used it **must** at a minimum, contain **all** the clauses in this agreement.

The contract is valid from the date of signature for a period **not** to exceed one (1) year. A signed copy of the original contract **must** be submitted to ADE for review prior to beginning food service operations. A completed on-line application **must** also be approved to receive reimbursements for claims. Annual renewal periods are allowable as long as they do not exceed four (4) additional one-year extensions. You **must** receive prior approval for each renewal if this option is exercised. Both the sponsor and the vendor must retain the completed agreement and all amendments.

If the annual aggregate value of the food service agreement is \$32,700 or more (\$35,000 or more for Charter Schools, see Section 10.1 for exempt charter school requirements), formal bid contracting procedures, as outlined in 7 CFR Part 210.16 and 3016.36, **are required**. Documentation **must** be on file that the contracting procedures met the requirements for fair and open competition. See the Arizona Department of Education *Child Nutrition Programs Guidance Manual*, Section 10 [www.ade.az.gov/health-safety/cnp/nslp/](http://www.ade.az.gov/health-safety/cnp/nslp/) for more information on Procurement

Charter schools shall also follow the guidelines for competitive purchasing below the dollar limits required for sealed bids as outlined in the *Uniform System of Financial Records for Arizona Charter Schools* on pages VI-G-7 and 8. The current dollar limits for these bids are as follows:

- a. Schools should obtain oral price quotations from at least three (3) vendors for all purchases of at least \$5,000, but less than \$15,000.
- b. Schools should obtain written price quotations from at least three (3) vendors for all purchases of at least \$15,000, but less than \$35,000.

## **INTER-DISTRICT AGREEMENTS**

Inter-district agreement **must** be submitted to the ADE/Health and Nutrition Services office where a school district operates the NSLP, SBP and SFSP in one or more sites in another district/charter school. However, this does **not** apply to the summer food only feeding programs. In such a case one district would administer the school meals program for both districts. The administering district is responsible for submitting the contract to ADE.

Please submit a signed copy of the current year agreement to ADE for review prior to beginning food service operations. A completed on-line application **must** also be approved to receive reimbursement for claims

The district **must** enter into a written agreement, which clearly specifies the responsibilities each district/charter has in administering the NSLP/SBP/SFSP, including, but not limited to the following:

- The length of time the contract will be in effect
- Who is responsible for point-of-service counts
- Who will handle the free and reduced price application process
- Who will receive and approve applications
- Who will handle the verification process
- Who will assume the responsibility for any over-claims identified during a review or audit
- Who will perform the required edit checks
- Who will ultimately be responsible for meal count and claiming accountability
- The administering district includes the sites/schools in the application/contract with the state agency

## **FOOD SERVICE MANAGEMENT COMPANIES**

### Introduction

Under the Food Service Agreement, sponsors are responsible for operating the Child Nutrition Programs in schools under their jurisdiction. These programs include the National School Lunch Program (NSLP), School Breakfast Program (SBP), Special Milk Program (SMP) and Summer Food Service Program (SFSP). To assist in carrying out this responsibility, a sponsor may contract with a food service management company (FSMC) to manage its food service operation involving these programs in one or more of its schools or in schools under other administrators with which agreements for such service have been enacted.

In order to ensure that an FSMC will provide the sponsor with the best food service operation available, the sponsor must consider a number of issues. These issues include the financial, administrative and operational activities that will be affected by contracting. The sponsor should allow sufficient time to identify and analyze these issues and to prepare for conversion from self-operating the food service to using an FSMC.

In contracting with an FSMC, the sponsor will be responsible to the ADE/Health and Nutrition Services office for settlement of all contractual and administrative issues arising out of the procurement. Therefore, the sponsor must utilize procurement procedures and bid documents that provide adequate safeguards for the sponsor as well as ensuring that the FSMC operates the food service in accordance with the objectives of the sponsor. Additionally, the sponsor should retain a sufficient number of knowledgeable staff to coordinate, monitor, review and control food service operations and to perform the responsibilities which must be retained by the sponsor.

Please refer to [www.ade.az.gov/health-safety/cnp/nslp/Operating/FSMCsteps.asp](http://www.ade.az.gov/health-safety/cnp/nslp/Operating/FSMCsteps.asp) for the steps in obtaining a food service management company. **Note: You must receive prior approval from the Health and Nutrition contracts officer before issuing the RFP/IFB or signing the contract.** A completed on-line application **must** also be approved to receive reimbursement for claims.

*A Food Service Management Company Manual for School Food Authorities* is available at: [www.ade.az.gov/health-safety/cnp/nslp/Operating/ContractingforMealService.asp](http://www.ade.az.gov/health-safety/cnp/nslp/Operating/ContractingforMealService.asp) for a practical guide and resource tool to begin using a FSMC.

#### Responsibilities Retained by the Sponsor

Regardless of whether an FSMC is utilized, the sponsor remains responsible for the overall operation of the Child Nutrition Programs in its schools. This responsibility requires that the sponsor maintain direct involvement in the operation of the food service.

Sponsors must retain:

1. Signature authority on the agreement to participate in any Child Nutrition Program, including the sponsor's free and reduced-price statement;
2. Signature authority on the monthly reimbursement claim (if applicable);
3. Development, distribution and collection of the parent letter and application for free and reduced-price meals and free milk;
4. Determination of eligibility for free and reduced-price meals and the conduct of any hearings related to such determinations;
5. Verification of applications for free and reduced-price meals;
6. Control of the school food service account and overall financial responsibility for the Child Nutrition Programs;
7. Establishment of all program and non-program meal and a la carte prices;
8. Title to United States Department of Agriculture donated foods;
9. Development of the 21-day cycle menus for the FSMC bid/proposal as well as changes to the cycle menu after the first 21 days of meal service;
10. Monitoring responsibilities under program regulations;
11. Establishment and maintenance of an advisory board composed of partners, teachers and students to assist in menu planning;
12. Maintenance of applicable health certifications and assurance that all state and local regulations are being met by an FSMC preparing or serving meals at a sponsor's facility;
13. Assurance that the maximum amount of USDA donated foods are received and utilized by the FSMC and accrue only to the benefit of the sponsor's non-profit food service account;
14. Control of the quality, extent and general nature of its food service;

15. Responsibility for all contractual agreements entered into in connection with the Child Nutrition Programs; and
16. Responsibility for ensuring resolution of program review and audit findings.

#### Considerations

When considering the use of an FSMC:

- ✓ Contact other school districts using FSMCs for information;
- ✓ ... Conduct an analysis of the current food service operation that would include:
  - identifying the current cost of operating the food service;
  - determining all cost elements which will be affected by contracting with an FSMC (i.e., personnel costs, food costs and other labor costs);
  - determining the maximum cost that can be incurred under an FSMC contract in order for the school food service to meet its goals;
  - analyzing all non-fiscal aspects of the current food service operation to determine the impact of utilizing an FSMC on these elements;
  - identifying what functions might be contracted;
  - determining what method of providing food service best meets the sponsor's goals and objectives;
- ✓ Determine the general extent or scope of work to be performed by the FSMC;
- ✓ Decide if the FSMC will cater any special activities and/or be involved in any other food service activity outside the nonprofit food service;
- ✓ Identify in which federally reimbursable programs or other nonprofit food service activities the FSMC will be involved. For example: the NSLP, a la carte sales during and/or between meal service periods, after hour snacks or meal/snack service under the Child and Adult Care Food Program, Summer Food Service Program and other food service operations that are conducted principally for the benefit of children;
- ✓ Identify sponsor personnel responsible for managing the FSMC contract, including the existing responsibilities that cannot be delegated to the FSMC and the new responsibilities that will occur under the FSMC contract;
- ✓ Determine if the FSMC will serve sites other than those under the administration of the sponsor (these additional sites must be included in the IFB/RFP);
- ✓ Develop bid/proposal documents. These documents would include the contract for competitive sealed bid procurement, since the contract should be issued as part of the invitation for bid (IFB). Under request for proposal procurement (RFP), all non-negotiable components of the contract should be included in the RFP, as well. In either type of procurement, the contract or contract provisions should be reviewed by the sponsor's legal counsel to ensure legal sufficiency as well as to provide the maximum amount of protection possible to the sponsor.

## Exhibit A

### LEA-FSMC Documents Checklist

#### General Information

This checklist is based on the requirements contained in 7 CFR Parts 210, 210.16, 3016, 3017 and 3018. This checklist does not include the requirements applicable to those FSMC's subject to the provisions of 7 CFR 250.30, state processing of USDA donated food. For information regarding those requirements, the LEA should contact the ADE. The LEA must ensure that they use only approved ADE food processors currently on state contract.

Though the checklist identifies certain unallowable LEA-FSMC contract document provisions (page 9) and advisable contract document provisions (pages 10 and 11), it is in no way inclusive of all such provisions. The ADE **must** carefully examine the contract documents to ensure that it **does not** contain other unallowable contract document provisions as well as provisions that are **not** in the best interest of the LEA. Careful scrutiny of the contract documents is required to ensure that there are no provisions that have the effect of restricting competition.

#### Contract Document Review

ADE reviews are required of contracts, proposed IFBs/RFPs, and all contract renewals. This checklist should be completed by the LEA and submitted with the reviewed documents to the ADE within the suggested timeframe established by the ADE. **Note: A signature from an authorized representative is required on the cover sheet.**

#### Instructions

In the blanks provided, for each of the required provisions contained in the checklist, indicate the page number in the documents where the provision is contained.

The following sections should be completed or updated, as applicable:

- Section A.     Cover Sheet, page 3**
- Section B.     LEA Responsibilities, pages 4 and 5**
- Section C.     FSMC Responsibilities, page 6**
- Section D.     General Terms - All LEA-FSMC Contracts, pages 7 and 8**

The following section(s) should be completed or updated, as applicable (in the case of a cost-reimbursable contract, the total value of the contract must reflect the management and administrative fees as well as the direct costs incurred by the FSMC which are billed to the LEA such as food and labor):

**Section E. LEA-FSMC Contracts in Excess of \$2,500, page 7**

**Section F. LEA-FSMC Contracts in Excess of \$10,000, page 7**

**Section G. LEA-FSMC Contracts in Excess of \$100,000, page 8**

**Section H. LEA-FSMC Contracts Involving Research, Developmental, Experimental and Demonstration Work, page 8**

The following section should be completed or updated:

**Section I. Unallowable LEA-FSMC Contract Document Provisions, page 9**

**Section J. Advisable Inclusions, pages 10 and 11**

**Initial Contract-** LEA should include a copy of the checklist when submitting the IFB/RFP and contract to ADE.

**Contract Renewal-**if the option for the yearly renewal of a contract is exercised the LEA must include:

1. A current signed copy of the certification regarding debarment and suspension (FSMC only)
2. A current signed copy of the certification regarding lobbying (FSMC and District)
3. A signed copy of the LEA-FSMC Documents Checklist (Section A only)
4. A signed copy of the amendment with any changes noted

Please submit a signed copy of the amendment to ADE for review prior to beginning food service operations. A completed on-line application must also be approved to receive reimbursement for claims.

If you have any questions regarding the renewal process or need clarification on FSMC related issues, please call Brian Walsh, contracts officer for the ADE/Health and Nutrition office at (602) 542-6208, or by email [bwalsh@ade.az.gov](mailto:bwalsh@ade.az.gov).



## LEA-FSMC Documents Checklist

### Section A - Cover Sheet

LEA Use: Review of the following attached documents was completed relative to the applicable requirements contained in this checklist.

Proposed Documents:

☐ Invitation for Bid (IFB) ☐ Request for Proposal (RFP) ☐ Contract

☐ Contract Renewal. Indicate basis for both renewal and fee increases or decreases, if applicable:

☐ 1st Renewal ☐ 2nd Renewal ☐ 3rd Renewal ☐ 4th Renewal

Period Covered by Renewal: From: \_\_\_\_\_ To: \_\_\_\_\_  
(Date) (Date)

#### For Awarded Contract:

Name of FSMC: \_\_\_\_\_

Agreement No.: \_\_\_\_\_ Contract Value: \_\_\_\_\_

Fee Structure of Contract ☐ Fixed Fee ☐ Cost-plus-a-fixed-fee (cost reimbursable)

SchoolFood Authority: \_\_\_\_\_

School Name(s): \_\_\_\_\_

Period Covered by Contract: From: \_\_\_\_\_ To: \_\_\_\_\_  
(Date) (Date)

I have reviewed these documents and certify that they are accurate to the best of my knowledge.

LEA Authorized Representative: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)

#### State Agency Use

Date Received: \_\_\_\_\_

Date Approved: \_\_\_\_\_

Action Taken:

State Agency Reviewer: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)

## Section B - LEA Responsibilities

Page No.	Compliance (ADE ONLY)			
_____ 1.	Yes	No	NA	<b>Provisions under Program Agreement, §210.16(a)(2)</b> -ensure that the food service operation is in conformance with the LEA's agreement under the program.
_____ 2.	Yes	No	NA	<b>Signature Authority, §210.16(a)(5)</b> -retain signature authority on the ADE-LEA agreement, free and reduced price policy statement and Claims for Reimbursement.
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	<b>3. Control of the School Food Service Account and Overall Financial Responsibility</b>			
_____ a.	Yes	No	NA	<b>§210.16(a)(4)</b> -retain control of the nonprofit school food service account and overall financial responsibility for the nonprofit food service operation; and
_____ b.	Yes	No	NA	retain control for the establishment of all prices, including price adjustments, for meals served under the nonprofit school food service account, e.g., pricing for reimbursable meals, a la carte service including vending machines, and adult meals.
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	<b>4. USDA Donated Foods</b>			
_____ a.	Yes	No	NA	<b>§210.16(a)(6)</b> -retain title to USDA donated foods; and
_____ b.	Yes	No	NA	ensure that all USDA donated foods made available to the FSMC, including processed USDA donated foods, accrue only to the benefit of the LEA's nonprofit school food service and are fully utilized therein. All refunds received from processors must be retained by the LEA.
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	<b>5. Quality, Extent and General Nature of Food Service</b>			
_____ a.	Yes	No	NA	<b>§210.16(c)(3)</b> -provide detailed specifications for each food component or menu item as specified in 7 CFR Part 210, and include these specifications in the IFBs or RFPs. Specifications must cover items such as grade, purchase units, style, condition, weight, ingredients, formulations, and delivery time. (Sample menus and specifications – Appendix F and G)
_____ b.	Yes	No	NA	<b>§210.16(a)(4)</b> -retain control of the quality, extent, and general nature of its food service.
_____ c.	Yes	No	NA	<b>§210.16(c)(3)</b> -make no payment for meals that are spoiled or unwholesome at the time of delivery, do not meet detailed specifications or do not otherwise meet the requirements of the contract.

**Section B - LEA Responsibilities  
(continued)****(ADE ONLY)**

_____ <b>6.</b>	Yes	No	NA	<b>Health Regulations, §210.16(a)(7)</b> -maintain all applicable health certifications and assure that all State and local regulations are being met by a FSMC preparing or serving meals at a LEA facility.
_____ <b>7.</b>	Yes	No	NA	<b>Monitoring Responsibilities, §210.16(a)(3)</b> -monitor the food service operation through periodic on-site visits to ensure the food service is in conformance with program regulations.
_____ <b>8.</b>	Yes	No	NA	<b>Use of Advisory Board, §210.16(a)(8)</b> -establish and maintain an advisory board composed of parents, teachers, and students to assist in menu planning.
_____ <b>9.</b>	Yes	No	NA	<b>21-Day Cycle Menu, §210.16(b)(1)</b> -include a 21-day cycle menu developed in accordance with the meal pattern requirements specified in 7 CFR Part 210. (Include sample menus)

## Section C - FSMC Responsibilities

Page	No.	Compliance		
		(ADE ONLY)		
_____ 1.	Yes	No	NA	<b>Health Certification, §210.16(c)(2)</b> -maintain all applicable State and/or local health certification(s) for the duration of the contract for any facility outside the school in which it proposes to prepare meals. The FSMC must meet all applicable State and local health regulations in preparing and serving meals at the LEA facility.
_____ 2.	Yes	No	NA	<b>21-Day Cycle Menu, §210.16(b)(1)</b> -adhere to the 21-day cycle menu, which was included in the IFB or RFP for the first 21 days of meal service. Changes thereafter may only be made with the approval of the LEA. (Sample menus – Appendix F and G)
_____ 3.	Yes	No	NA	<b>Provision of Free and Reduced Price Meals, §210.16(a)</b> -in order to offer a la carte food service, the FSMC must also offer free, reduced price and full price reimbursable meals to all eligible children.
_____ 4.	Yes	No	NA	<b>USDA Donated Foods, §210.16(a)(6)</b> -to the maximum extent possible, utilize USDA donated foods made available by the LEA solely for the purpose of providing benefits for the LEA's food service operation.
_____ 5.	Yes	No	NA	<b>Recordkeeping, §3016.36 (i)(10-11), § 35-214, 215 and §210.16(c)(1)</b> - maintain records to support the LEA's claim for reimbursement; make all records available to the LEA upon request; and retain all records for a period of five (5) years after the LEA submits the final claim for reimbursement for the fiscal year for inspection and audit by representatives of the LEA, ADE, USDA and Comptroller General, at any reasonable time and place. In instances where audit findings have not been resolved, the records must be retained beyond the five (5) year period until resolution of the issues raised by the audit.
_____ 6.	Yes	No	NA	<b>Reporting, §210.16(c)(1)</b> -report the claim information to the LEA promptly at the end of each month or more frequently as specified by the LEA.

## Section D - General Terms - All LEA-FSMC Contracts

**Page No.**      **Compliance  
(ADE ONLY)**

**1.      Contract Duration**

_____ a.	Yes	No	NA	<b>§210.16(d)</b> -contracts must be of a duration no longer than one (1) year.
_____ b.	Yes	No	NA	<b>§210.16(d)</b> -options for the yearly renewal of a contract may not exceed four (4) additional one-year extensions.

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_____ 2.	Yes	No	NA	<b>Energy Policy and Conservation Act, §3016.36 (i)(13)</b>
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_____ 3.	Yes	No	NA	<b>Termination Clause, §210.16(d)</b> -either party may cancel for cause with 60-day notification.
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_____ 4.	Yes	No	NA	<b>Nonperformance Sanctions -§3016.36 (i)(1)</b> -provisions allowing for administrative, contractual, or legal remedies in instances where the FSMC violates or breaches contract terms, and providing for such sanctions and penalties as may be appropriate.
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## Section E - LEA-FSMC Contracts in Excess of \$2,500 Involving FoodService Workers Whose Duties are Manual or Physical in Nature

☐ Indicate with a check mark (✓) in the block if the following provision is not applicable.

**Page No.**

_____	Yes	No	NA	<b>Contract Work Hours and Safety Standards Act, §3016.36 (i)(6)</b>
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## Section F - LEA-FSMC Contracts in Excess of \$10,000

☐ Indicate with a check mark (✓) in the block if the following provisions are not applicable.

**Page No.**

_____ 1.	Yes	No	NA	<b>Termination Clause - §3016.36 (i)(2)</b>
_____ 2.	Yes	No	NA	<b>Equal Employment Opportunity - §3016.36 (i)(3)</b>

## Section G - LEA-FSMC Contracts in Excess of \$100,000

### Compliance (ADE ONLY)

☐ Indicate with a check mark (✓) in the block if the following provision is not applicable.

#### Date Signed

_____	Yes	No	NA	<b>Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions, 7 CFR 3017.510</b> -certification regarding debarment/suspension from participating in Federal contracts/grants/awards. <b>A new certification is also required for each renewal period.</b>
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☐ Indicate with a check mark (✓) in the block if the following provision is not applicable.

#### Date Signed

_____	Yes	No	NA	<b>Certification Regarding Lobbying, 7 CFR Part 3018</b> -a new certification is also required for each renewal period.
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☐ Indicate with a check mark (✓) in the block if the following provision is not applicable.

#### Date Signed

_____	Yes	No	NA	<b>Disclosure of Lobbying Activities, 7 CFR Part 3018</b> -lobbying activities in connection with school nutrition programs must be disclosed. If there are material changes after the initial filing, updated reports must be submitted on a quarterly basis.
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☐ Indicate with a check mark (✓) in the block if the following provision is not applicable.

#### Page No.

_____	Yes	No	NA	<b>Clean Air Act, Clean Water Act, and Environmental Protection Agency Regulations, 7 CFR 3016. 36(i) (12)</b>
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## Section H - LEA-FSMC Contracts Involving Research, Developmental, Experimental and Demonstration Work

☐ Indicate with a check mark (✓) in the block if the following provision is not applicable.

#### Page No.

_____	Yes	No	NA	<b>USDA Rights to Copyrights, Patent Rights and Rights in Data and Reporting of Discoveries and Inventions, 7 CFR 3016.36 (i)(7-9)</b>
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## Section I - Unallowable LEA-FSMC Contract Document Provisions

The following indicate problem areas that have been identified in LEA-FSMC contract documents. The contract documents must be thoroughly checked, regardless of the procurement method used, to ensure that these areas have not been included, in any form. Indicate with a check mark (✓) in each block that the review of the documents indicates that there are no such provisions in the reviewed documents, unless specified below.

Check (✓) as described above.

### Compliance (ADE ONLY)

- |                          |    |     |    |    |   |
|--------------------------|----|-----|----|----|---|
| <input type="checkbox"/> | 1. | Yes | No | NA | <b>Cost Plus a Percentage of Cost/Income</b> -cost plus a percentage of cost/income to the FSMC, however represented. <b>§210.16(c)</b>                           |
| <input type="checkbox"/> | 2. | Yes | No | NA | <b>Duplicate Fees</b> -fee structures that permit a FSMC to bill management fees and charge the same costs as cost-reimbursable expenses.                         |
| <input type="checkbox"/> | 3. | Yes | No | NA | <b>Purchasing</b> -if the LEA does the purchasing, clauses that limit the selection of vendors to only FSMC-approved vendors.                                     |
| <input type="checkbox"/> | 4. | Yes | No | NA | <b>Acceleration Clause</b> -provisions (multi-year) that require full payment (e.g., program equipment purchases) if the contract is not renegotiated.            |
| <input type="checkbox"/> | 5. | Yes | No | NA | <b>Interest Payments</b> -interest payments to the contractor, however represented, including interest payments for equipment purchases. <b>OMB Circular A-87</b> |
| <input type="checkbox"/> | 6. | Yes | No | NA | <b>Interest Payments</b> -interest payments to the contractor, however represented, including interest payments for equipment purchases. <b>OMB Circular A-87</b> |
| <input type="checkbox"/> | 7. | Yes | No | NA | <b>Delegation of LEA Responsibilities</b> -FSMC responsibility for any of the functions that must be retained by the LEA.   |
| <input type="checkbox"/> | 8. | Yes | No | NA | <b>Automatic Renewal</b> -provisions, which automatically renew the contract.   |
| <input type="checkbox"/> | 9. | Yes | No | NA | <b>Processing Contracts</b> -contract document language that permits the FSMC to subcontract USDA donated foods for further processing.                           |

For the item(s) above not checked (✓), indicate item number(s) with corresponding page number(s) of documents where provision(s) appears.

Item Number(s)	Page Number(s)	(ADE ONLY)

## Section J - Advisable Inclusions

Though the items below are not regulatory in nature, they have been included to offer technical assistance to the LEA in developing contractual language that will ensure that the best interest of the LEA is served by the contract.

Page No.	Compliance (ADE ONLY)			
_____ 1.	Yes	No	NA	<b>Compliance with Program Regulations</b> -requirement that the FSMC conduct program operations in accordance with <b>7 CFR Parts 210, 215, 220, 225 and 250</b> .
<hr/> <hr/>				
_____ 2.	<b>USDA Donated Foods</b>			
_____ a.	Yes	No	NA	Method which delineates how the FSMC will pass the value of USDA donated foods used to the LEA.
_____ b.	Yes	No	NA	Specific statement that USDA donated foods are not to be used for special functions cond
<hr/> <hr/>				
_____ 3.	Yes	No	NA	<b>Special Functions</b> -method which delineates the cost allocation for special functions cond
<hr/> <hr/>				
_____ 4.	<b>Fee Structure</b>			
_____ a.	Yes	No	NA	In a cost-reimbursable contract, requirement for breakdown of administrative and management fees in order to prevent double billing.
_____ b.	Yes	No	NA	Basis for fee adjustments.
<hr/> <hr/>				
_____ 5.	<b>Purchasing</b>			
_____ a.	Yes	No	NA	In a cost-reimbursable contract, if the FSMC makes purchases, the prices charged the LEA
_____ b.	Yes	No	NA	A provision stating that any silence, absence or omission from the contract document spec
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_____ 6.	Yes	No	NA	<b>Certification of Independent Price Determination</b> -certification regarding non-collusion. This certification may be met through the use of the Certification of Independent Price Determination form (Appendix N).



**Section J - Advisable Inclusions  
(continued)**

**Page No.      Compliance  
(ADE ONLY)**

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_____ <b>7.</b>	Yes    No    NA	<b>Civil Rights Compliance</b> -assurance that the FSMC will conform with all civil rights requirements applicable to the LEA.
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_____ <b>8.</b>	Yes    No    NA	<b>Buy American Provision</b> -compliance with the Buy American provision under <b>7 CFR 210.21 (d)(2)</b> .
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<b>9.</b>	<b>Claim Liability</b>
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_____ a.	Yes    No    NA	The FSMC accepts liability caused by FSMC negligence for claims assessed as a result of Federal/State reviews/audits, corresponding with the LEA's period of liability.
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_____ b.	Yes    No    NA	The FSMC accepts liability for any negligence on its part that results in any loss of, improper use of, or damage to USDA donated foods.
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_____ <b>10.</b>	Yes    No    NA	<b>Location of Records</b> -all FSMC records pertaining to the LEA should be maintained at the LEA while the contract is in effect, and preferably for the required retention period.
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_____ <b>11.</b>	Yes    No    NA	<b>Nutrition Education</b> -FSMC responsibility for nutrition education activities, as applicable.
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_____ <b>12.</b>	Yes    No    NA	<b>Scope of Services to be Provided</b> - Specify programs to be operated, i.e. food service for National School Lunch Program, National School Breakfast Program, Special Milk Program, Afterschool Snack Program, vending machines, concession stands, catering, vending to other schools, etc, by the FSMC and, additionally provide an accurate description of the technical requirements for the scope of services to be provided.
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_____ <b>13.</b>	Yes    No    NA	<b>Bid Bond (Fixed Amount)</b> - To protect the school's interest in the event that the offeror does not comply with all the contractual documents after being issued an award.
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